

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

Presubscribed Interexchange Carrier)
Changes) CC Docket No. 02-53

EMERGENCY PETITION FOR TEMPORARY WAIVER OF SBC COMMUNICATIONS INC.

Pursuant to Section 1.3 of the Commission’s rules, SBC Communications Inc. (“SBC”), on behalf of its incumbent local exchange carrier (“ILEC”) affiliates, seeks a temporary waiver of the Commission’s April 8, 2005 *Extension Order*,¹ which requires ILECs to file revised PIC-change rates on or before October 17, 2005, with an effective date of November 1, 2005. Specifically, SBC seeks a six-week extension, until November 25, 2005, to file its revised PIC-change rates, with an effective date of December 10, 2005.

Background. In the Commission’s February 17, 2005 *PIC Order*,² the FCC required ILECs to modify the charges they assess end users and interexchange carriers for changes to an end user’s presubscribed interexchange carrier, or “PIC.” Whereas the Commission previously had established a federal \$5 safe harbor charge for all PIC changes, the Order required ILECs to bifurcate the charge depending on whether the PIC change request is submitted electronically or manually,³ and established safe harbor rates of \$1.25 for electronic PIC-change requests and \$5.50 for manual PIC-change requests.⁴ Additionally, ILECs were required to reduce the

¹ *Presubscribed Interexchange Carrier Charges*, Order, CC Docket No. 02-53 (rel. April 8, 2005) (“*Extension Order*”).

² *Presubscribed Interexchange Carrier Charges*, Report and Order, WC Docket No. 02-53 (rel. Feb. 17, 2005) (“*PIC Order*”).

³ *Id.* ¶7.

⁴ *Id.* ¶17.

bifurcated PIC charge by 50% when the customer simultaneously changes both the PIC and the intraLATA PIC (“LPIC”).⁵

Shortly after adoption of the *PIC Order*, SBC and other ILECs filed ex partes detailing the extensive changes that would be required to bifurcate the PIC-change charge and implement the 50% rule.⁶ Specifically, SBC documented that implementing the *PIC Order* would require: (1) changes to its regional retail and carrier billing and ordering systems; (2) changes to its Customer Account Record Exchange (“CARE”) system; (3) modifications to its methods and procedures used by service representatives, product tracking systems, and other operations support systems; and (4) changes to its state tariffs.⁷ SBC advised that it would need approximately 10-to-12 months to implement these changes.⁸

On April 8, 2005, the Commission issued an order extending the deadline for filing revised PIC-change rates to October 17, 2005, with an effective date of November 1, 2005. Since that time, SBC has expended significant resources to implement the bifurcation within the six-month timeframe permitted under the order, but will be unable to complete implementation of the bifurcated rates until December 10, 2005. Thus, SBC seeks a temporary waiver until that date to bifurcate its PIC-change rates.

⁵ *Id.* ¶21.

⁶ Letter from Toni Acton, Associate Director, SBC Services Inc., to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-53 (filed March. 31, 2005) (“*March Ex Parte*”); see Letter from Indra Sehdev Chalk, Counsel, United States Telecom Association, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-53 (filed March. 10, 2005); Letter from Richard T. Ellis, Executive Director Federal Regulatory Advocacy, Verizon, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-53 (filed March. 25, 2005).

⁷ *March Ex Parte*, at 2-4. SBC has attached a copy of its ex parte.

⁸ *Id.* at 4.

Discussion. The Bureau, under delegated authority, may waive the Commission's rules for good cause if special circumstances warrant a deviation from the general rule and such deviation would serve the public interest.⁹ As SBC demonstrates below, there is good cause to grant SBC's temporary waiver request.

In its *March Ex Parte*, SBC provided the Commission a detailed breakdown of the extensive system and process changes SBC would have to make to bifurcate its PIC-change rates. SBC explained that based on its previous experience, the complexity of the changes required, and the extensive testing necessary to implement the bifurcation and 50% rule, SBC would need approximately 10-to-12 months to fully implement the requirements of the *PIC Order*. SBC has been able to make the necessary changes to its CARE system, billing and ordering systems, and CABS system, as described in its *March Ex Parte*, to implement the bifurcation.¹⁰ Despite its best efforts to accelerate the completion of all tasks associated with the bifurcation by the November 1, 2005 deadline, SBC has only reached the beginning of the system and release testing phase. That phase requires the testing of all applications that have been modified, and all interfacing applications.¹¹ Specifically, SBC will do the following:

- Develop PIC/LPIC test cases to test all new functionality associated with the bifurcation to ensure that all pre-existing functionality still works; and
- Test all systems that interface with each other to ensure that feeder files from the sending systems can be read by the receiving systems, and that all impacted systems are receiving the requisite data and producing the desired outputs based on the new functionality.

⁹ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). 47 C.F.R. § 0.91.

¹⁰ The necessary changes to these systems have been made for testing purposes. Once SBC has completed all testing, the changes to these systems will be deployed.

¹¹ *March Ex Parte*, Exhibit 1, at 3.

This phase will take approximately eight weeks to complete, resulting in the need for a six-week extension.

There is good cause for grant of this temporary waiver. The system and release testing described above is essential for the successful implementation of the bifurcation requirements. Such testing will enable SBC to identify potential billing or system errors associated with the bifurcation, as well as any negative impacts to downstream systems that interface with systems directly impacted by the new system changes and functionality.

There certainly is ample Commission precedent for the grant of such temporary waivers to allow carriers to complete requisite testing to ensure the proper implementation and operability of new functionality or software necessary to enable carriers to comply with FCC requirements.¹² For example, in the 911 context, the Wireless Bureau granted Ericsson a three-month extension to comply with the FCC's 911 call completion requirements, finding, in part, that such time was necessary "to fully test and verify the performance of handset software."¹³ The Bureau further concluded that "inadequate testing, which could occur if testing is rushed, might fail to uncover problems that could undercut the performance of handsets, especially in emergency situations."¹⁴

Here, an elimination or shortening of the system and release testing phase could result in customers being over- or undercharged for PIC change requests, and SBC under- or over-recovering its PIC-change costs. Further, because downstream interfacing systems could be

¹² See *911 Call Processing Modes*, Order, WT Docket No. 99-328 15 FCC Rcd 15, 671 (2000); See, e.g. *Telephone Number Portability*, Order, CC Docket No. 95-116 (June 26, 1998) (The Network Services Division granted BellSouth a temporary extension of the Phase III local number portability deadline, in part, to allow BellSouth additional time to complete testing).

¹³ *911 Call Processing Modes*, 15 FCC Rcd at 15, 674.

¹⁴ *Id.* at 15,674-5.

impacted, an elimination or reduction in testing could result in billing or other errors for unrelated SBC products and services. Grant of SBC's temporary waiver will minimize these potential outcomes, by allowing SBC to continue taking the necessary steps to ensure that customers are billed properly in each PIC or PIC/LPIC scenario, and that other SBC systems and processes are not adversely affected. Further, grant of this waiver will serve the public interest by enabling SBC to implement its revised PIC-change rates at one time, rather than in a piecemeal fashion, thereby eliminating potential customer confusion.¹⁵

Accordingly, for the foregoing reasons, SBC requests that the Commission grant SBC a temporary waiver of the filing deadline for its revised PIC-change rates until November 25, 2005, with an effective date of December 10, 2005.

Respectfully submitted,

SBC Communications Inc.

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¹⁵ *Extension Order*, ¶4.